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Legislative and Caselaw Update for the Suffolk County Planning Federation and the American Planning Federation, Ronkonkoma, New York, October 9, 2003

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2002-2003 Municipal-related Legislation

Laws of 2002, Chapter 662, Voting Requirements

Effective July 1, 2003. Chapter 662 of the Laws of 2002- Amends General City Law, Town Law, Village Law and the General Municipal Law to establish special voting requirements applicable to zoning boards of appeal, planning boards, county planning boards and regional planning councils. This bill responds to and modifies the recent Court of Appeals decision, Tall Trees Construction Corp. v. Zoning Board of Appeals of the Town of Huntington, 97 N.Y.2d 86 (2001).

Laws of 2003, Chapter 213, Planned Unit Development Districts

Effective July 1, 2004. This bill amends the "zoning enabling statutes" (General City Law art. 5-A; Town Law art. 16; and Village Law art. 7) to statutorily authorize cities (except New York City), towns and villages to create, as part of any zoning law, planned unit development districts (referred to as "PUDs"); the legislation generally describes the purposes of PUDs. Cities, towns and villages have been using the PUD concept for more than fifty years. PUDs are a means of promoting flexibility in zoning districts since they typically allow for custom tailoring of land uses and densities according to an overall design scheme. See Sheldon W. Damsky, ET AL., All You Ever Wanted to Know About Zoning, pp. 16-3 – 16-6 (3rd Ed. 1999). The legislation has no consequence except to codify the availability of PUDs as a zoning tool. The bill merely recognizes what the courts have already held to be authorized by the zoning enabling acts. Webster Associates v Town of Webster, 50 N.Y.2d 220 (1983); Rodgers v. Village of Tarrytown, 302 N.Y. 115 (1951)

Cases

New York Court of Appeals

Municipal Home Rule Law

Cohen v. Board of Appeals of the Village of Saddlerock, 100 N.Y.2d 395 (2003); *In the Matter of Frank Russo v. Irving Black, et al.*, 100 N.Y.2d 395 (2003) (cases decided together)

In a split decision, the Court of Appeals held that the Legislature intended, by implication, to preempt villages from using the practical difficulties area variance standard through the supersession of the Village Law pursuant to the Municipal Home Rule Law. The Court's holding fundamentally impairs the supersession power of villages and towns under the Municipal Home Rule Law.

SEQRA

In the Matter of Edward S. Gordon, et al. v. Edward T. Rush, et al., 100 N.Y.2d 236 (2003)

A positive declaration is a final administrative action that is ripe for judicial review. The Court of Appeals tacitly reversed some earlier Appellate Division cases that held that a positive declaration requiring a DEIS is merely a step in the agency decision process, and as such is not final or ripe for judicial review.

In the Matter of New York City Coalition to End Lead Poisoning v. Vallone, 100 N.Y.2d 337 (2003)

The City failed to provide an adequate, reasoned elaboration for its negative declaration on a local law regarding abatement of lead paint in multiple dwellings. The City was not entitled to rely on the legislative record for the reasoned elaboration.

Other Cases by Subject Matter

Noise law

People v. Lord, 2003 N.Y. Slip Op. 50684(U) (Justice Court, Incorporated Village of Old Westbury, Nassau Co. 2003)

The Court declared a local law regulating noise in violation of the First, Fourth and Fifth Amendments of the United States Constitution on the ground that the law too vague.

Mandatory nature of notice requirements for zoning changes

Dalrymple Gravel & Contracting Co. v. Tn of Erwin, 305 A.D.2d 1036 (4th Dept. 2003)

The Court invalidated an amendment to the Town's zoning law banning gravel mining where the Town failed to comply with its own public hearing notice requirements, which included a requirement that municipalities within 500 feet of property affected by a zoning change. The Town of Erwin failed to provide the required notice to two such municipalities.

Regulatory Search and Seizure

People v. Bifulco, 195 Misc.2d 483 (Dist. Ct. Suffolk Co. 2003)

Homeowner could not consent to a search of her principal residence as a precondition for a town permit to use an accessory garage for an apartment.

Hours of Operation

Louhal Properties, Inc. v. Strada, 191 Misc.2d 746 (Sup. Ct. Nassau Co. 2002)

The Court enjoined the Village from enforcing zoning law regulating the hours a store could operate.

(The Department of State has written and posted on its website a legal memorandum on the subject of regulating hours of operation. The memorandum may be found at the following web address: <http://www.dos.state.ny.us/cnsl/lgops.html>

Special Use Permits

Dries v. Town Board of the Town of Riverhead, 305 A.D.2d 596 (2d Dept. 2003)

The Court sustained the Town Board's denial of a special use permit for two restaurants based on concerns about pedestrian safety.

Subdivision

Mohr v. Edwards, 305 A.D.2d 414 (2d Dept 2003)

The Planning Board's approval of a subdivision was arbitrary and capricious after it had just voted to deny the same subdivision and where it failed to explain its reversal.

SEQRA

Defreestville Area Neighborhood Association, Inc. v. Town Board of North Greenbush, 299 A.D.2d 631 (3d Dept. 2002)

The Town Board violated SEQRA when it did not consider the impacts of a shopping center development in the context of a rezoning application being made for the purpose of allowing the development.

Westchester Day School v. Village of Mamaroneck, 236 F.Supp.2d 349 (D.C. S.D. N.Y. 2002) (No. 1)

The ZBA's rescission of its negative declaration for expansion of a religious day school was arbitrary and not supported by the record. (ZBA could pass rescission resolution by majority of the board. Resolution did not require unanimous vote.)

Variances

Use variances

Greenfield Mobil, Inc. v. MacAvoy, et al., Slip Op. (Saratoga Co. April 16, 2003).

The Court held that the ZBA's grant of a use variance was arbitrary and capricious. The evidence showed that the owner was earning a reasonable return on the property being used as a gas station. The Court stated: "The controlling legal principal was then and still is that if a reasonable return is presently generated, undue hardship does not exist."

Area variances

Aydelott v. Town of Bedford Zoning Board of Appeals, N.Y.L.J., June 25, 2003 (Sup. Ct. West. Co.)

The Court overturned the ZBA's denial of an area variance application on the ground that the ZBA failed to apply the complete balancing test and pretty exclusively relied on the substantiality of the variance and self-created hardship without adequately considering the impact on the neighborhood and the benefit to the applicant.

Open Meetings Law

In the Matter of Csorny v. Shorham-Wading River Central School District, 305 A.D.2d 83 (2d Dept. 2003),

A board of education may not prohibit, unobtrusive electronic or videotape recording of its meetings.

Religious Land Use

Westchester Day School v. Village of Mamaroneck, 2003 WL 33110445 (D.C. S.D. N.Y. September 5, 2003) (No. 2)

United States District Court for the Southern District of New York granted summary judgment on Westchester Day School's RLUIPA claim against the Village of Mamaroneck ZBA and the Village; the Court held RLUIPA to be constitutional and that the ZBA's complete denial of Westchester Day School's application for a special use permit to renovate the school "substantially burdened the exercise of religion."